

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13299 of 2018

1. Laxman Prasad, Son of late Sitaram Mahto
2. Parshuram Prasad, Son of late Sitaram Mahto
3. Ashok Prasad, Son of late Sitaram Mahto, All Resident of Village- Ghughari Tand, Tola- Lakhanpur, Ward No. 45, P.S. Chand Chaura, Vishnu PadCivil Lines, District- Gaya.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Department of Revenue and Land Reforms, Govt. of Bihar, Patna.
2. The Principal Secretary Arban Development Department Govt. of Bihar, Patna.
3. The District Magistrate, Gaya.
4. The Municipal Commissioner, Municipal Corporation, Gaya.
5. Lalita Devi, Wife of Raju Mahto Resident of Village- Ghughari Tand, Tola- Lakhanpur, Ward No. 45, P.S. Chand Chaura, Vishnu PadCivil Lines, District- Gaya.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Abhishek- Advocate Mr. Prabhat Kumar Dipak- Advocate
For the State	:	Mr. Subhash Pd. Singh- GA-3 Mr. Indeshwari Prasad Mandal- AC to GA-3
For Municipal Corporation:		Mr. Rabindra Kumar Priyadarshi- Advocate

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

2 10-04-2023 Heard learned counsel for the petitioners, learned

AC to GA-3 for the State and learned counsel for the Gaya

Municipal Corporation.

The learned counsel for the petitioners submits that

one Ram Kishun Mahto had two sons namely, Mathura

Mahto and Sita Ram Mahto and one daughter namely, Punia



Devi.

It is next submitted that petitioners are from the branch of Sita Ram Mahto where respondent No.5 is claiming to be daughter-in-law of Mathura Mahto. It is submitted that In the Year 2006, son of Punia Devi namely, Ram Chandra Singh had filed a Partition Suit No.48 of 2006/230 of 2006 for partitioning of 1/9th share in the suit property against the petitioners and husband of respondent No.5.

The learned counsel for the petitioners submitted that in the aforesaid partition suit, the petitioners had specifically pleaded that husband of Respondent No.5 is not the son of Mathura Mahto, hence, has no share in the property. Further, in the suit, one of the issues framed involved that whether defendant no.5, Raju Mahto is son of Mathura Mahto and has share in the property. It is next submitted that even after valid service of notice, Raju Mahto (husband of respondent no.5) did not appear in the suit and the suit on contest was decreed (Annexure-2 to the writ application) in favour of the plaintiff (Ram Chandra Singh)



and accordingly, a preliminary and a final decree dated 14.09.2007 and 26.08.2009 was prepared and the learned Court decided that Raju Mahto is not son of Mathura Mahto and thus, has no share in the suit property.

The learned counsel for the petitioners submits that after the decree in partition suit as aforesaid, they got their names mutated in the government record of rights with regard to the property in question and have been paying rent.

However, C.W.J.C. No.10723 of 2017 was filed by one Laxman Prasad, which is pending adjudication. It is next submitted that petitioners also filed an application before the Municipal Commissioner, Gaya for mutating their names in the concerned revenue records which led to institution of Mutation Case No.25 of 2013, in which the respondent No.5 appeared and filed her objection.

The Municipal Commissioner, Gaya by his order dated 08.01.2016 in Mutation Case No.25 of 2013 rejected the claim of the petitioners without appreciating the fact that in the aforesaid partition suit, the Court has conclusively held



that husband of respondent No.5 is not the son of Mathura Mahto. It is next submitted that the order dated 08.01.2016 passed by the Municipal Commissioner Gaya in Mutation case No.25 of 2013 is impugned in the present writ application.

The learned counsel for the petitioners submits that the order passed by the Municipal Commissioner, Gaya is mechanical. It is also submitted that he has not taken into consideration the fact that in the partition suit it has been conclusively held that husband of respondent No.5 is not the son of Mathura Mahto. It is also submitted that till the judgment in partition suit is existing, the same will prevail upon all the proceedings until set aside. The learned counsel next submits that till date, the judgment passed in partition suit has not been appealed.

The learned counsel for the Gaya Municipal Corporation seeks time for filing a counter-affidavit, the Court is not inclined to grant time to the Corporation for filing counter-affidavit as the writ application is pending adjudication before this Court for the last more than five



years.

The learned counsel for the State is present.

Considering the submissions made by the learned counsel for the petitioners, the order dated 08.01.2016 in Mutation Case No.25 of 2013 is set aside and the matter is remanded back to the Municipal Commissioner, Gaya to consider the matter afresh in accordance with law after giving proper opportunity of hearing to the respondent No.5.

The present writ application is disposed of accordingly.

(Satyavrat Verma, J)

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